

(iii) Emergency information that is provided in the video portion of programming that is not a regularly scheduled newscast, or a newscast that interrupts regular programming, must be accompanied with an aural tone.

(2) This rule applies to emergency information primarily intended for distribution to an audience in the geographic area in which the emergency is occurring.

(3) Video programming distributors must ensure that:

(i) Emergency information should not block any closed captioning and any closed captioning should not block any emergency information provided by means other than closed captioning; and

(ii) Emergency information should not block any video description and any video description provided should not block any emergency information provided by means other than video description.

(c) *Complaint procedures.* A complaint alleging a violation of this section may be transmitted to the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability. The complaint should include the name of the video programming distributor against whom the complaint is alleged, the date and time of the omission of emergency information, and the type of emergency. The Commission will notify the video programming distributor of the complaint, and the distributor will reply to the complaint within 30 days.

[65 FR 26762, May 9, 2000, as amended at 65 FR 54811, Sept. 11, 2000]

EFFECTIVE DATE NOTE: At 65 FR 54811, Sept. 11, 2000, § 79.2 was amended by revising paragraphs (a)(1), (b)(1), and (b)(3). These paragraphs contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 79.3 Video description of video programming.

(a) *Definitions.* For purposes of this section the following definitions shall apply:

(1) *Designated Market Areas (DMAs).* Unique, county-based geographic areas designated by Nielsen Media Research, a television audience measurement service, based on television viewership in the counties that make up each DMA.

(2) *Second Audio Program (SAP) channel.* A channel containing the frequency-modulated second audio program subcarrier, as defined in, and subject to, the Commission's OET Bulletin No. 60, Revision A, "Multichannel Television Sound Transmission and Processing Requirements for the BTSC System," February 1986.

(3) *Video description.* The insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.

(4) *Video programming.* Programming provided by, or generally considered comparable to programming provided by, a television broadcast station that is distributed and exhibited for residential use.

(5) *Video programming distributor.* Any television broadcast station licensed by the Commission and any multichannel video programming distributor (MVPD), and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission.

(6) *Prime time.* The period from 8 to 11:00 p.m. Monday through Saturday, and 7 to 11:00 p.m. on Sunday local time, except that in the central time zone the relevant period shall be between the hours of 7 and 10:00 p.m. Monday through Saturday, and 6 and 10:00 p.m. on Sunday, and in the mountain time zone each station shall elect whether the period shall be 8 to 11:00 p.m. Monday through Saturday, and 7 to 11:00 p.m. on Sunday, or 7 to 10:00 p.m. Monday through Saturday, and 6 to 10:00 p.m. on Sunday.

(b) The following video programming distributors must provide programming with video description as follows:

(1) Commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC), as of September 30, 2000, and that are licensed to a community located in the top 25 DMAs, as determined by Nielsen Media Research, Inc. for the year 2000, must provide 50 hours of video description per calendar quarter, either during prime time or on children's programming;

(2) Television broadcast stations that are affiliated or otherwise associated with any television network, must pass through video description when the network provides video description and the broadcast station has the technical capability necessary to pass through the video description, unless using the technology for providing video description in connection with the program for another purpose that is related to the programming would conflict with providing the video description;

(3) Multichannel video programming distributors (MVPDs) that serve 50,000 or more subscribers, as of September 30, 2000, must provide 50 hours of video description per calendar quarter during prime time or on children's programming, on each channel on which they carry one of the top five national nonbroadcast networks, as defined by an average of the national audience share during prime time of nonbroadcast networks, as determined by Nielsen Media Research, Inc., for the time period October 1999–September 2000, that reach 50 percent or more of MVPD households; and

(4) Multichannel video programming distributors (MVPDs) of any size:

(i) must pass through video description on each broadcast station they carry, when the broadcast station provides video description, and the channel on which the MVPD distributes the programming of the broadcast station has the technical capability necessary to pass through the video description, unless using the technology for providing video description in connection with the program for another purpose that is related to the programming

would conflict with providing the video description; and

(ii) must pass through video description on each nonbroadcast network they carry, when the network provides video description, and the channel on which the MVPD distributes the programming of the network has the technical capability necessary to pass through the video description, unless using the technology for providing video description in connection with the program for another purpose that is related to the programming would conflict with providing the video description.

(c) *Responsibility for and determination of compliance.* (1) The Commission will calculate compliance on a per channel, calendar quarter basis, beginning with the calendar quarter April 1 through June 30, 2002.

(2) In order to meet its fifty-hour quarterly requirement, a broadcaster or MVPD may count each program it airs with video description no more than a total of two times on each channel on which it airs the program. A broadcaster or MVPD may count the second airing in the same or any one subsequent quarter.

(3) Once a commercial television broadcast station as defined under paragraph (b)(1) of this section has aired a particular program with video description, it is required to include video description with all subsequent airings of that program on that same broadcast station, unless using the technology for providing video description in connection with the program for another purpose that is related to the programming would conflict with providing the video description.

(4) Once an MVPD as defined under paragraph (b)(3) of this section:

(i) has aired a particular program with video description on a broadcast station they carry, it is required to include video description with all subsequent airings of that program on that same broadcast station, unless using the technology for providing video description in connection with the program for another purpose that is related to the programming would conflict with providing the video description; or

(ii) has aired a particular program with video description on a nonbroadcast station they carry, it is required to include video description with all subsequent airings of that program on that same nonbroadcast station, unless using the technology for providing video description in connection with the program for another purpose that is related to the programming would conflict with providing the video description.

(5) In evaluating whether a video programming distributor has complied with the requirement to provide video programming with video description, the Commission will consider showings that any lack of video description was de minimis and reasonable under the circumstances.

(d) *Procedures for exemptions based on undue burden.* (1) A video programming provider may petition the Commission for a full or partial exemption from the video description requirements of this section, which the Commission may grant upon a finding that the requirements will result in an undue burden.

(2) The petitioner must support a petition for exemption with sufficient evidence to demonstrate that compliance with the requirements to provide programming with video description would cause an undue burden. The term “undue burden” means significant difficulty or expense. The Commission will consider the following factors when determining whether the requirements for video description impose an undue burden:

(i) The nature and cost of providing video description of the programming;

(ii) The impact on the operation of the video programming distributor;

(iii) The financial resources of the video programming distributor; and

(iv) The type of operations of the video programming distributor.

(3) In addition to these factors, the petitioner must describe any other factors it deems relevant to the Commission’s final determination and any available alternative that might constitute a reasonable substitute for the video description requirements. The Commission will evaluate undue burden with regard to the individual outlet.

(4) The petitioner must file an original and two (2) copies of a petition requesting an exemption based on the undue burden standard, and all subsequent pleadings, in accordance with § 0.401(a) of this chapter.

(5) The Commission will place the petition on public notice.

(6) Any interested person may file comments or oppositions to the petition within 30 days of the public notice of the petition. Within 20 days of the close of the comment period, the petitioner may reply to any comments or oppositions filed.

(7) Persons that file comments or oppositions to the petition must serve the petitioner with copies of those comments or oppositions and must include a certification that the petitioner was served with a copy. Parties filing replies to comments or oppositions must serve the commenting or opposing party with copies of such replies and shall include a certification that the party was served with a copy.

(8) Upon a showing of good cause, the Commission may lengthen or shorten any comment period and waive or establish other procedural requirements.

(9) Persons filing petitions and responsive pleadings must include a detailed, full showing, supported by affidavit, of any facts or considerations relied on.

(10) The Commission may deny or approve, in whole or in part, a petition for an undue burden exemption from the video description requirements.

(11) During the pendency of an undue burden determination, the Commission will consider the video programming subject to the request for exemption as exempt from the video description requirements.

(e) *Complaint procedures.* (1) A complainant may file a complaint concerning an alleged violation of the video description requirements of this section by transmitting it to the Consumer Information Bureau at the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant’s disability. Complaints should be addressed to: Consumer Information

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Bureau, 445 12th Street, SW, Washington, DC 20554. A complaint must include:

(i) The name and address of the complainant;

(ii) The name and address of the broadcast station against whom the complaint is alleged and its call letters and network affiliation, or the name and address of the MVPD against whom the complaint is alleged and the name of the network that provides the programming that is the subject of the complaint;

(iii) A statement of facts sufficient to show that the video programming distributor has violated or is violating the Commission's rules, and, if applicable, the date and time of the alleged violation;

(iv) the specific relief or satisfaction sought by the complainant;

(v) the complainant's preferred format or method of response to the complaint (such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate the complainant's disability); and

(vi) a certification that the complainant attempted in good faith to resolve the dispute with the broadcast station or MVPD against whom the complaint is alleged.

(2) The Commission will promptly forward complaints satisfying the above requirements to the video programming distributor involved. The video programming distributor must respond to the complaint within a specified time, generally within 30 days. The Commission may authorize Commission staff either to shorten or lengthen the time required for responding to complaints in particular cases. The answer to a complaint must include a certification that the video

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programming distributor attempted in good faith to resolve the dispute with the complainant.

(3) The Commission will review all relevant information provided by the complainant and the video programming distributor and will request additional information from either or both parties when needed for a full resolution of the complaint.

(i) The Commission may rely on certifications from programming suppliers, including programming producers, programming owners, networks, syndicators and other distributors, to demonstrate compliance. The Commission will not hold the video programming distributor responsible for situations where a program source falsely certifies that programming that it delivered to the video programming distributor meets our video description requirements if the video programming distributor is unaware that the certification is false. Appropriate action may be taken with respect to deliberate falsifications.

(ii) If the Commission finds that a video programming distributor has violated the video description requirements of this section, it may impose penalties, including a requirement that the video programming distributor deliver video programming containing video description in excess of its requirements.

(f) Private rights of action are prohibited. Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section. The Commission shall have exclusive jurisdiction with respect to any complaint under this section.

[65 FR 54812, Sept. 11, 2000, as amended at 66 FR 8529, Feb. 1, 2001; 66 FR 16618, Mar. 27, 2001]